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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
(CAMDEN VICINAGE)**

In re:

Shapes/Arch Holdings L.L.C.,  
Shapes L.L.C., Delair L.L.C., Accu-Weld  
L.L.C., and Ultra L.L.C.

Debtors

(Hon. Gloria M. Burns)

Chapter 11

Lead Case No. 08-14631 (GMB)  
(Jointly Administered)

**MOTION OF CERTAIN DIRECT GENERATOR DEFENDANTS FOR RELIEF FROM  
AUTOMATIC STAY TO PERMIT DISMISSAL OF DEBTORS FROM JOINT  
DEFENSE GROUP**

TO: HONORABLE GLORIA M. BURNS  
UNITED STATES BANKRUPTCY JUDGE

Boise Cascade Corp.; Weyerhaeuser Company; C-E Glass, Inc.; Rohm and Haas Co.;  
Cook Composites and Polymers Co. on its behalf and on behalf of Superior Varnish & Dryer and  
C.J. Osborn Chemicals Co.; Devoe Coatings, Inc.; Georgia-Pacific Corp.; Sears Holding  
Management Corp.; Ford Motor Co.; SL Industries, Inc./SL Modern Hard Chrome; Our Lady of  
Lourdes Medical Center; and West Jersey Hospital (“Certain Direct Generator Defendants” or  
simply the “Generator Defendants”), by and through their attorneys, Archer & Greiner, P.C.;  
Dewey & LeBoeuf LLP and Norris, McLaughlin & Marcus, P.A. (as local counsel); Conrad

O'Brien Gellman & Rohn, P.C.; Shook Hardy & Bacon, LLP and Wolff & Samson PC (as local counsel); Drinker Biddle & Reath LLP, Latham & Watkins, LLP; Saul Ewing LLP and Sachs, Maitlin, Fleming & Greene, respectively, hereby seek the entry of an order modifying the automatic stay pursuant to 11 U.S.C. § 362(d) to permit dismissal of the Debtors from that certain Joint Defense Group (as defined below) and in support thereof state as follows:

### **BACKGROUND**

1. As discussed below, the Generator Defendants do not believe that the automatic stay of Section 362 of the Bankruptcy Code is implicated by their decision to dismiss the Debtors from the Joint Defense Group (as defined below), and indeed, believe that such dismissal was properly effectuated on or about April 21, 2008. However, based on communications received from Debtors' counsel which dispute the dismissal of Debtors from the Joint Defense Group, out of an abundance of caution, the Generator Defendants submit this motion lifting the automatic stay to the extent necessary to permit such dismissal.

2. On December 4, 1991, Pennsauken Township and the Authority that owns and operates a landfill located in Pennsauken, NJ sued numerous defendants in the New Jersey Superior Court, Law Division, Camden County, in a case captioned Pennsauken Solid Waste Management Authority and Township of Pennsauken, et al. v. Ward Sand & Materials, Inc., et al., Docket No. CAM-L-13345-91 and Docket No. CAM-L-13345-93 (the "Pennsauken Action").

3. Certain of these defendants, including the Debtors as successors in interest to Aluminum Shapes, LLC, n/k/a Shapes LLC, formed a joint defense group (the "Joint Defense Group") subject to a confidential joint defense agreement (the "Joint Defense Agreement") with respect to the Pennsauken Action.

4. As is common with such agreements, the Joint Defense Agreement requires that the parties to the agreement actively engage in the coordination of discovery and other case related tasks and to make payments to offset the group's expenses. Further, as is common, a party may be dismissed by the other members of the group for failure to perform tasks and assignments, for nonpayment of any shared expense, for failure to continue to have mutual and common interests, and for other cause shown.

5. On March 16, 2008, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

6. On March 27, 2008, environmental counsel for the Debtors filed a Notice of Bankruptcy and Automatic Stay alerting the parties to the Pennsauken Action of the Debtors' bankruptcy filing and the automatic stay. (See Notice of Bankruptcy and Automatic Stay, attached hereto as Exhibit A.)

7. By letter dated April 1, 2008 (the "Court Stay Letter"), the Court informed environmental counsel to the Debtors in the Pennsauken Action that the case was stayed as to the Debtors, but would continue to proceed as to the remaining defendants. (See Court Stay Corr., attached hereto as Exhibit B.)

8. Subsequent to the filing of the Notice of Bankruptcy and Court Stay Letter, environmental counsel for the Debtors ceased to have any active involvement in the Pennsauken Action on behalf of Aluminum Shapes, LLC n/k/a Shapes LLC or the Debtors. Since the Petition Date, counsel for Debtors on behalf of Aluminum Shapes, LLC n/k/a Shapes LLC or the Debtors have provided no assistance in the coordination of the ongoing discovery in the Pennsauken Action and no longer assist in the defense undertaken by the Joint Defense Group.

9. By letter dated April 21, 2008 (the “Dismissal Letter”), all Joint Defense Group members who were current in their payment of group expenses informed environmental counsel for Debtors that said members were unanimously dismissing Debtors from the Joint Defense Group for good cause. (See the Dismissal Letter, attached hereto as Exhibit C.)

10. By letter dated May 20, 2008 (the “Removal Letter”), environmental counsel for the Debtors requested that they be removed from the Joint Defense Group service list for any communications concerning the Joint Defense Group expert reports. (See the Removal Letter, attached hereto as Exhibit D.).<sup>1</sup>

11. All remaining Joint Defense Group members continued to work with the group experts in preparing expert reports for the Pennsauken Action. These reports were due to be served on May 23, 2008.

12. Late in the afternoon of May 22, 2008—the eve of the deadline for submitting the expert reports—counsel for Debtors sent the remaining Joint Defense Group members a letter via facsimile alleging that the Dismissal Letter contained many deficiencies and that the actions of the remaining Joint Defense Group members violated the automatic stay provisions of the Bankruptcy Code.

13. In an attempt to resolve this dispute, during the next 24 hours, numerous telephone calls and emails ensued between counsel for Debtors and counsel for certain Joint

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<sup>1</sup> Counsel for the Debtors represented two members of the Joint Defense Group: Aluminum Shapes LLC n/k/a Shapes LLC and A&H Bloom. This letter from Ms. Hennessy, counsel for Aluminum Shapes LLC n/k/a Shapes LLC and A&H Bloom in the Pennsauken Action forwarded a letter to the Joint Defense Group requesting that her firm be removed from any communications pertaining to the Group expert reports. This letter was forwarded subsequent to the stay pertaining to Aluminum Shapes LLC, n/k/a Shapes LLC and, therefore, only addressed A&H Bloom. By this letter, counsel for Aluminum Shapes LLC n/k/a Shapes LLC and A&H Bloom requested to be removed from any communication pertaining to Group

Defense Group members. Ultimately, all parties agreed to, and did, insert the following language into each of the Joint Defense Group's expert reports:

Efforts are underway by parties, who this report has been prepared for, to remove Aluminum Shapes from this Group. There is a dispute as to whether one must seek relief from the automatic stay in the Shapes LLC, a/k/a Aluminum Shapes, bankruptcy case to effect such removal. The inclusion of Aluminum Shapes is not intended to prejudice the balance of the Group's rights.

Three such expert reports were served on behalf of the Joint Defense Group on May 23, 2008.

14. Numerous depositions, including those of the Joint Defense Group's experts, have been scheduled in the Pennsauken Action over the upcoming months, and the Joint Defense Group will continue to coordinate efforts and incur expenses in connection with this additional discovery.

#### **Relief Requested**

15. The Generator Defendants do not believe that the automatic stay precludes dismissal of the Debtors from the Joint Defense Group and respectfully submit that such dismissal was effectuated on or about April 21, 2008. Nevertheless, out of an abundance of caution and as a result of communications from the Debtors' counsel, the Generator Defendants seek relief from the automatic stay to dismiss the Debtors from the Joint Defense Group in light of the Debtors' failure to participate meaningfully in the defense of the Pennsauken Action and the change in circumstances that have caused the Debtors' interests to diverge from those of the other Joint Defense Group members' interests in the litigation.

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expert reports. The primary purpose of forming the Joint Defense Group was to proffer Group expert reports and to share in fact and expert discovery.

**Basis for Relief Requested**

16. Section 362(d)(1) of the Bankruptcy Code provides that on request of a party in interest and after notice and hearing, the Court shall grant relief from the automatic stay “for cause.”

17. The Bankruptcy Code does not define “cause.” Accordingly, the bankruptcy courts must decide in each case whether sufficient cause exists for relief from the automatic stay. In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997)(“Section 362(d)(1) does not define “cause,” leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case.”).

18. The “cause” for relief from the automatic stay in this case is: (i) the Debtors are not participating in the Joint Defense Group; (ii) environmental counsel have withdrawn their representation in the Joint Defense Group; and (iii) the Generator Defendants no longer wish to associate with the Debtors as part of the Joint Defense Group.

19. In addition to the cause shown above, immediate relief from stay is necessary because the Generator Defendants are being prejudiced by the Debtors’ failure to participate in expert discovery which is now underway in the Pennsauken Action.

WHEREFORE, the Generator Defendants respectfully request that this Court enter an order modifying the automatic stay pursuant to 11 U.S.C. § 362(d) to permit dismissal of the Debtors from the Joint Defense Group and granting such other relief as the Court deems just and proper.

Respectfully submitted,  
**DRINKER BIDDLE & REATH LLP**

Dated: June 9, 2008

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